

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 2:15-cr-95
)
 vs.)
)
 ABDIRAHMAN SHEIK MOHAMUD,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE JAMES L. GRAHAM
TUESDAY, AUGUST 29, 2017; 1:08 P.M.
COLUMBUS, OHIO

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Tuesday Afternoon Session

August 29, 2017

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(Defendant not present)

THE COURT: Good afternoon, ladies and gentlemen.

MR. SHAMANSKY: Good afternoon, Your Honor.

MR. SQUIRES: Good afternoon, Your Honor.

THE COURT: Counsel, we are gathered here today to discuss the issues that I raised a week or so ago at the commencement of the sentencing hearing in this case, and I threw out a lot of questions.

I have received some excellent assistance from our probation office, and I believe each of you has the report completed by United States Probation Officer Schal Boucher; am I correct? Mr. Squires?

MR. SQUIRES: Yes, Your Honor.

THE COURT: Mr. Shamansky?

MR. SHAMANSKY: Correct, sir.

THE COURT: Very well. The Court notes the presence of our chief United States probation officer, Mr. John Dierna.

Mr. Dierna, I understand you have some materials for me that relate to this matter.

MR. DIERNA: I do, Your Honor. May I approach?

THE COURT: Yes, you may approach. Now, counsel, I had requested some assistance from Mr. Dierna. Some of the

1 documents that he has provided me may be confidential; and once
2 I've had an opportunity to analyze them, I'll determine just to
3 what extent they are appropriate for me to share for the
4 purposes of this matter.

5 I've learned that the Administrative Office of the
6 United States Courts' subdivision devoted to the United States
7 Probation Office has begun various studies and contemplated
8 some programs that address some of the issues that I had
9 raised, and I think that's some indication that the questions I
10 raised are questions that probably many other judges will be
11 dealing with now and in the future, and it's a developing area
12 of concern for the courts and for the probation office of the
13 United States, to properly carry out our dual missions of
14 protecting the public.

15 And so, Mr. Dierna, I want to -- I appreciate very much
16 your work in assembling this material for me. I don't think
17 I'm going to be asking you any questions at this matter, and so
18 you are excused now if you wish to be excused.

19 I understand Ms. Boucher is here, and I will be asking
20 her some questions, I believe.

21 Now, I would like to hear from counsel, and this will
22 just be a wide-ranging discussion. It's not going to be an
23 argument or a formal proceeding. It's going to be an
24 opportunity for counsel for both sides to help me decide what
25 the next step in this case should be and how I should address

1 some of the issues that I've raised.

2 So I would like to start first with defense counsel,
3 Mr. Shamansky.

4 MR. SHAMANSKY: Your Honor, if I might, counsel for
5 the Government and I had a phone call, as we promised last week
6 when we went through your checklist, and first and foremost,
7 with Karen's help, and subject to the Court's approval, we were
8 hopeful that you would request that Dr. Haskins, with whom
9 you've worked, I guess, in the recent past on a criminal case,
10 and she prepared a psychological report that was helpful to the
11 Court -- were she available, the parties believe she would be a
12 fine choice to conduct a psychological in this case.

13 THE COURT: Well, that's very useful information,
14 Mr. Shamansky. Is that correct, Mr. Squires?

15 MR. SQUIRES: That is correct, Your Honor.

16 THE COURT: I'm sure that one of the things I'll want
17 to do is to have a psychological evaluation conducted; and if
18 this is a person that both of you have confidence in, then that
19 will be a great weight in the Court's selection of an
20 individual to do this.

21 So very good. Thank you, Mr. Shamansky.

22 MR. SHAMANSKY: Your Honor, we also spoke, of course,
23 about the Court's concern vis-a-vis the Somali community. I
24 was tasked with making some inquiries in that regard. I've had
25 a prior relationship with the Somali Chamber of Commerce, as it

1 were, and I'm hopeful by the end of this week I'll have some
2 names to submit to Doug for his consideration and also the
3 Court's regarding whether or not this is -- at least my
4 client's condition is something that's approved or disapproved
5 of, how it's being dealt with within the community as per the
6 Court's concern.

7 THE COURT: Excellent, excellent. How would you
8 propose to provide that information?

9 MR. SHAMANSKY: Well, Your Honor, we're working
10 cooperatively together.

11 THE COURT: Excellent.

12 MR. SHAMANSKY: So I was going to give it to Doug so
13 he can vet it with his colleagues, and then we would present it
14 to Karen for your approval.

15 THE COURT: That's a good suggestion, Mr. Shamansky,
16 and it relates to some questions I'm going to be asking a
17 little later in these proceedings.

18 I have a very strong feeling that the Muslim community
19 has a very important role in these issues, and what I hope to
20 do is to find a way to work constructively with the Muslim
21 community in perhaps coming up with some programs that would be
22 rehabilitation programs for their adherents who become involved
23 in terrorist activity and have gotten involved in this jihadist
24 mentality.

25 MR. SHAMANSKY: Yes, sir.

1 THE COURT: So I don't think it's condoned in any way
2 by the general community, and I believe it's completely
3 inconsistent with the teachings of Islam, and -- so I think the
4 Muslim community and local religious leaders can be of great
5 assistance in these matters.

6 MR. SHAMANSKY: Yes, sir. I believe that we're all on
7 the same page in that regard, the royal "we" sitting on this
8 side of the courtroom.

9 THE COURT: Excellent.

10 MR. SHAMANSKY: And lastly, Your Honor, relative to
11 the city administration, as I thought about the concern the
12 Court had, what does the City of Columbus have to offer moving
13 forward, maybe from a prophylactic or preventative view.

14 It finally came to me yesterday. One of our former city
15 prosecutors is now part of the administration. He does a very,
16 very good job, and he works closely and directly with the
17 mayor's office, so that is one thing that I had not spoken to
18 Doug about, and his colleagues as well, but Adam Friedman is
19 the young man -- who is very involved in the community level.
20 He was city prosecutor with Richard Pfeiffer, Jr. He's now
21 moved on to the Ginther administration, and I believe, without
22 sounding presumptuous, were we to ask, he would be happy to
23 assist in any way possible.

24 So those are the concerns that I was able to address,
25 and if we thought that it was appropriate that I address,

1 relative to the list that you had provided us.

2 THE COURT: Excellent. Following up on that
3 particular subject, that is, the city administration, have
4 either of you talked to any representative of the city
5 government?

6 MR. SQUIRES: Your Honor, we have. Mr. Gibson -- Joe
7 Gibson is here today as a Special Assistant United States
8 Attorney and also a Franklin County prosecutor, and he has
9 spoken with the City of Columbus, and we're gathering
10 information regarding a New Americans program that they have,
11 and what efforts they have to disseminate information within
12 those new populate in the immigrant communities.

13 THE COURT: Excellent.

14 MR. SQUIRES: We'll be talking with Mr. Shamansky and
15 will be making a similar report to Ms. Martin.

16 THE COURT: Have either of you had any contact with
17 the city administration regarding any avenues of communication
18 that have been established between the city administration and
19 the Islamic community in Columbus?

20 MR. SHAMANSKY: Your Honor, what I can tell you, at
21 least anecdotally, as you correctly pointed out, there's a
22 substantial Somali community here, and we see these individuals
23 every day at our municipal courthouse, so there's quite a
24 community. And then there's a group of interpreters that work
25 very closely with them, assisting them through not only with

1 the language issues, but also with the customs and the laws and
2 everything that relates to being a good citizen, so -- again,
3 that's something we're working on.

4 I'm not saying I back-burnered it, but it's just --
5 given the Court's list, we were trying to prioritize as much as
6 possible.

7 So we have those resources available to us. These are
8 folks who are hands-on in the community every single day. They
9 do a terrific job. So I'm hopeful that I'll be able to -- as I
10 not only speak to the religious personnel who are respected
11 within the community, but also the folks with the hands-on,
12 day-to-day experience with individuals -- that I will be able
13 to come up with names for the Court.

14 THE COURT: Excellent. Mr. Shamansky, I appreciate
15 that.

16 And I realize that a lot of this is not case-specific.
17 It doesn't really concern this specific case but is a much
18 broader concern of which this case is a part.

19 MR. SHAMANSKY: Yes, sir.

20 THE COURT: The reference to a New Americans program
21 is something that really expresses a thought that I had for
22 some time that might be an appropriate role for this Court to
23 have, and in the process of preparing applicants for
24 citizenship, to -- and perhaps even follow up with some basic
25 teachings on the principles of the American Constitution and

1 how they relate to religious liberty and the rights of all
2 citizens. So I'll be really interested in learning what the
3 city has in mind along those lines.

4 MR. SHAMANSKY: Yes, sir.

5 THE COURT: All right. Anything else, Mr. Shamansky?

6 MR. SHAMANSKY: No. Thank you, Judge Graham.

7 THE COURT: All right. Mr. Squires.

8 MR. SQUIRES: Your Honor, along those lines, regarding
9 outreach efforts, the FBI has been working on a statement that,
10 in conjunction with Mr. Shamansky, we hope to get to the Court
11 regarding what outreach efforts the FBI has made since
12 approximately 2008, and a little earlier than that, to the
13 present day -- that being weekly, at least monthly contact in
14 some circumstances, contact with the Somalian community and
15 what outreach efforts have been made and what is the message
16 that's delivered.

17 I've personally been involved in some of those outreach
18 efforts in the last couple of years, and I'll be able to aid in
19 that description in that statement by saying what the U.S.
20 Attorney's office does in conjunction with the FBI.

21 THE COURT: Very well. I'm sure the FBI has a lot of
22 information and knowledge in this area. Much of it, I'm sure,
23 would be not public information. But they may very well be a
24 source of information about who the relevant leaders are in the
25 community and those who are capable of having an impact on the

1 opinions of the community and so forth. So that would be
2 helpful.

3 MR. SQUIRES: Your Honor, I can say that regarding the
4 specifics of the relevant leaders and the opinions, I don't
5 believe that's something that they can get into because of the
6 sensitive nature of the outreach.

7 It's a funny position to be a law enforcement officer
8 but yet delivering information, so I don't know that we would
9 be able to give that information back, but I know that
10 Mr. Shamansky will be addressing those issues in his efforts in
11 defining the community's position within the Somali immigrant
12 community.

13 THE COURT: All right. Very well. Anything else,
14 Mr. Squires?

15 MR. SQUIRES: Your Honor, you had questions regarding
16 the immigration procedures and programs.

17 THE COURT: Right.

18 MR. SQUIRES: We are able to and would give to the
19 Court, and also Mr. Shamansky, both the immigration documents,
20 that is, how did Mr. Mohamud get his citizenship, and then
21 related to that, how did he get his passport.

22 Because the passport was something that was used,
23 obviously, for travel and what did he say on those -- on those
24 documents in order to secure them.

25 The Court was concerned about what was told or not told

1 during that process, and we think we'll be able to objectively
2 provide those documents which we're seeking to have used as
3 evidence. They are not always allowed to be used as evidence.

4 THE COURT: That may be an appropriate part of a
5 supplemental presentence investigation report in this case; is
6 that what you would expect?

7 MR. SQUIRES: That was our goal, and I hope that that
8 would happen if we were given permission to use those
9 documents.

10 THE COURT: All right. Very well. What else?

11 MR. SQUIRES: Your Honor, you talked about the Hate
12 Crime and the application of potentially U.S. Sentencing
13 Guideline 3A1.1.

14 Just taking a step back in the greater view of this, the
15 application of 3A1.4 does apply in this case. That's the
16 terrorism guideline.

17 3A1.1 is what I would call more general: Is a specific
18 religious or sect being targeted as a result of this crime?

19 We believe, just at first glance, that 3A1.4 subsumes
20 that, and it might be a factual, legal, and, frankly, a
21 practical reason why we wouldn't want to put that forward to
22 the Court.

23 We can state that position more clearly perhaps in a
24 Government sentencing memo, but it's the position of the
25 Government, after looking at a few Fourth Circuit cases and

1 district court cases, that that may not apply in this case.

2 THE COURT: All right. Well, my concern there was
3 whether one of the motivations for the activities that
4 Mr. Mohamud involved himself were -- represented a persecution
5 of a minority segment of Islam, specifically, the Alawite sect,
6 and that Mr. Mohamud was a member of the Sunni sect, and --
7 whether that's correct terminology, but he was a Sunni, and the
8 Alawites were viewed as heretics or people to be excluded from
9 the community and/or persecuted because of their religious
10 beliefs, and that's why I raised that.

11 All right. What else?

12 MR. SQUIRES: Your Honor, regarding the B.O.P.
13 de-radicalization, as the Court mentioned, I think Ms. Boucher
14 has more than adequately addressed that, and it's the position
15 of the United States that we concur that she both gave a
16 thorough and accurate summary of those programs.

17 THE COURT: I'm wondering if there might be a
18 potential for developing a program that -- I don't know that it
19 would be appropriately called "de-radicalization" but more
20 appropriately called "rehabilitation" for young men and
21 women -- it seems like they are mostly young men and women --
22 that get involved in the jihadist mentality and contemplate
23 carrying out acts of terrorism.

24 We are -- I know that our probation office is providing
25 moral reconnection therapy programs which really have some of the

1 same kinds of approaches that I think might be valuable here,
2 particularly if -- if, as I suspect, that this jihadist
3 mentality is not consistent with the teachings of Islam, that
4 there could be some component of assisting these individuals
5 who become involved in it to realize that it is not morally
6 acceptable under the teachings of Islam as well as the
7 standards of civilization.

8 So I don't know whether there could be such a program or
9 maybe there ought to be a division of the moral reconnection
10 therapy program to include the subject of terrorism.

11 All right. Go ahead.

12 MR. SQUIRES: And then the last thing I have is just
13 in general, it's the mitigation of radicalization which would
14 be how did this happen, what motivated him, was he under some
15 coercive effect, and I believe that Mr. Shamansky is going to
16 be addressing that as part of his materials that we will be
17 jointly submitting to the Court.

18 THE COURT: All right. Very well. Anything else,
19 Mr. Squires?

20 MR. SQUIRES: No. Thank you, Your Honor.

21 THE COURT: Very well. I appreciate your comments.
22 I've mentioned MRT, moral reconnection therapy, as one of the
23 programs that the Court's probation office is involved with.

24 There are other kinds of programs that our probation
25 office has been using to address other kinds of aberrant

1 behavior, and -- programs like Alcoholics Anonymous, support
2 groups which consist of individuals who have some firsthand
3 experience with the problem, anger management programs, mental
4 health programs.

5 So there is a substantial precedent here for
6 rehabilitative programs directed to specific kinds of aberrant
7 behavior, and I just have a feeling that this particular kind
8 of aberrant behavior and criminal activity may be amenable to
9 rehabilitative programs like these others that are already in
10 effect. We have sex offender treatment programs as well.

11 So there are a host of kinds of issues that result in
12 criminal activity that are now being addressed by
13 rehabilitative measures, and I'm hoping that that might be a
14 part of a program that could be implemented with regard to the
15 this kind of aberrant behavior.

16 Now, these kind of programs, it seems to me, would come
17 into play in the Bureau of Prisons, and there the focus would
18 be on prison inmates, but even more importantly is the matter
19 of the Court's probation office in supervising these
20 individuals once they are released from incarceration, and in
21 this case the Court would expect to impose a significant term
22 of supervised release.

23 And the terms and conditions of supervised release are
24 another area in which rehabilitative programs are often
25 required as part of the conditions of supervised release, so if

1 we can -- if we can find a program or our probation office can
2 come up with some ideas about rehabilitative programs and
3 approaches, then, of course, the Court could then include those
4 in the terms of its sentence of supervised release.

5 Now, one of the things that Ms. Boucher gave the Court
6 were some terms of supervised release that have apparently been
7 used by another probation office, specifically the probation
8 office of -- the federal probation office in Chicago, and they
9 are now currently involved in supervising some individuals
10 convicted of these kinds of terrorist offenses.

11 I was interested in seeing the suggestion of the
12 installation of software, computer software, to monitor
13 computer activities. That's often done in sex offender cases,
14 and I think it could well be appropriate in a terrorism case
15 since I think it's frequently the case that individuals become
16 radicalized through the internet, and so computer monitoring
17 may very well be an important and appropriate condition of
18 supervised release in this case.

19 The condition requiring follow-up mental health
20 assessment is also a program that the Court would consider in
21 this case, and certainly there's a lot of precedent for doing
22 that in other kinds of criminal activities.

23 I think this kind of criminal activity would be
24 appropriate for follow-up mental health assessments; and
25 significantly, there's a suggestion that the use of periodic

1 polygraph examinations may be an appropriate condition of
2 supervised release, and it is done in other kinds of criminal
3 offenses, and in particular sex offender cases, and it may very
4 well be appropriate in this kind of case as well.

5 So these are some of the ideas that are circulating in
6 my mind now and which counsel may want to be thinking about as
7 well.

8 And I'm going to, of course, be -- I'll be relying upon
9 my probation officers to come up with these kinds of
10 suggestions for the conditions of supervised release, and I
11 would be happy to have comments from either side regarding this
12 part of my sentence, the supervised release part of the
13 sentence, and in particular formulating conditions that will
14 contribute to the goal of protecting the public.

15 Mr. Squires, would you like to comment on that?

16 MR. SQUIRES: Your Honor, these specific areas,
17 minimizing -- monitoring computers, following up on mental
18 health assessments, and use of periodic polygraphs are
19 conditions that the Government has seen before and had no
20 previous objection to, and we have no objection in this case.

21 THE COURT: Do you have any suggestions for other
22 programs of this kind?

23 MR. SQUIRES: Not at this time, but exploring the
24 Court's concerns you've well articulated today, we'll
25 communicate with probation to see if we can come up with

1 others, as well as talking with the prosecutors and probation
2 officers who handle those specific cases.

3 THE COURT: Now, one of the standard conditions of
4 supervised release in other criminal offenses is the
5 prohibition of association with other felons, and here I think
6 that would be quite appropriate in terms of association with
7 perhaps known and identified terrorist organizations or other
8 individuals who have been convicted of terrorist offenses or
9 who are identified as proponents or propagandists, if you will,
10 of terrorist ideology.

11 Any comments about that?

12 MR. SQUIRES: Well, we're going to have to get back
13 with you because it does raise the potential freedom of
14 assembly and religion --

15 THE COURT: I doubt that freedom of assembly would
16 apply to a known terrorist organization.

17 MR. SQUIRES: That's correct. But identified known
18 terrorist organizations -- if a mosque had previously been
19 identified or had a connection, would that be off-limits? I'm
20 not sure, and I only raise it as an issue, and I know that
21 we'll get back to the Court on that.

22 THE COURT: All right. Well, obviously there are and
23 will always be constitutional limitations to the Court's
24 sentencing power; however, there are well-recognized exceptions
25 to some of these constitutional principles, including the

1 principle of freedom of association, and we certainly do that
2 in the case of felons associating with other felons, and I
3 would think that that same principle would apply with convicted
4 terrorists of associating with other convicted terrorists. And
5 how far beyond that we can go, I don't know, but I would like
6 to have some input and guidance on it.

7 MR. SQUIRES: Thank you, Your Honor.

8 THE COURT: Mr. Shamansky, would you like to comment
9 on any of these things that I have just been discussing?

10 MR. SHAMANSKY: Your Honor, I'm in agreement with the
11 Court's -- fully in agreement with the Court's position. I do
12 have a question obviously about the use of polygraphs.

13 The question is -- I know how they work in sex cases.
14 Have you viewed pornography or have you not? But how they
15 would be applicable in this case, I'm just starting to think
16 through.

17 You know, they are a useful -- useful law enforcement
18 tool. They are also a useful defense lawyer tool, so --

19 THE COURT: That's an excellent point, Mr. Shamansky.
20 Polygraph testing may be appropriate, but there probably need
21 to be some identified proper areas that it would be applied to.

22 MR. SHAMANSKY: Yes, sir. I think Dr. Haskins could
23 hopefully help us with that, in terms of the psychological
24 profile. Do you have still have these tendencies? What do you
25 think about? What do you dream about? I don't know where we

1 go. I don't think it's a bad idea. I'm just saying the
2 parameters.

3 THE COURT: I agree with you, and I think what we
4 would need to do is very similar to the challenge we have with
5 restrictions on freedom of association, would be the area of
6 questioning which would be proper and which wouldn't be proper
7 in terms of a polygraph examination, but there are a couple of
8 things I can think of right off the top of my head that would
9 seem to be appropriate, such as monitoring through polygraph
10 examination compliance with limitations like use of a computer
11 and so forth.

12 MR. SHAMANSKY: Yes, sir.

13 THE COURT: And associations with known terrorist
14 organizations or communications with them.

15 So if the Court should consider imposing a periodic
16 polygraph examination or authorizing it as one of the terms of
17 supervised release, I think I need some help in defining the
18 proper parameters of such examinations, and I would appreciate
19 your help on that.

20 MR. SHAMANSKY: And we can work together on that, of
21 course.

22 THE COURT: All right. Anything else, Mr. Shamansky?

23 MR. SHAMANSKY: No. Thank you, Judge Graham.

24 THE COURT: All right. Very well, very well. Well,
25 counsel, I appreciate your help on this. We all have some

1 additional work to do.

2 I'm going to be away for about two weeks; and when I'm
3 back, I would like to have another meeting like this, and I'm
4 hoping then that you can have your joint presentations
5 available for me.

6 Before I leave, I am going to issue an order for the
7 psychological examination, and then I'll -- I'm pretty sure I'm
8 going to accept your joint recommendation on the person to be
9 selected, so -- I want to get that done before I leave so that
10 the psychological evaluation is under way, because I don't want
11 to unduly delay sentencing in this case.

12 I want to make sure we're doing the best job we can, but
13 I also want to keep the case on track.

14 MR. SHAMANSKY: We understand.

15 THE COURT: Anything else that we can discuss today
16 that would be useful?

17 MR. SHAMANSKY: No. Karen might have a suggestion.

18 (Pause in proceedings.)

19 THE COURT: Ms. Martin says that she had had some
20 discussions with you about jointly contacting Dr. Haskins to
21 see if she would be willing to do the exam. I would like for
22 you to do that and then let us know immediately.

23 MR. SHAMANSKY: We'll do that today, Your Honor.

24 MR. SQUIRES: Thank you, Your Honor.

25 THE COURT: Very well. If you can get us that

1 information today, that will complete that part of the
2 proceeding today.

3 MR. SHAMANSKY: Thank you.

4 THE COURT: Anything else?

5 MR. SQUIRES: No, Your Honor.

6 THE COURT: Ms. Boucher, anything else?

7 PROBATION OFFICER BOUCHER: Your Honor, I just wanted
8 to tell the Court that I do have some guidance from the
9 counterterrorism unit through the B.O.P.

10 We can actually call him directly, Your Honor, if you
11 have questions. I have his cell phone number.

12 THE COURT: Excellent.

13 PROBATION OFFICER BOUCHER: So if you would like to do
14 that, I can give you the number. I can assist you in doing
15 that.

16 THE COURT: If you would give me a supplemental report
17 with that number, I would appreciate it very much.

18 PROBATION OFFICER BOUCHER: Yes, Your Honor.

19 THE COURT: All right. Very well.

20 That will conclude today's discussion, and we will
21 reconvene as soon as I have returned to the bench.

22 MR. SHAMANSKY: Thank you, Your Honor.

23 MR. SQUIRES: Thank you, Your Honor.

24 THE COURT: Very well.

25 (The proceedings were adjourned at 1:41 p.m.)

C E R T I F I C A T E

I, Allison A. Kimmel, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable James L. Graham, Senior Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Allison A. Kimmel
Allison A. Kimmel, RDR, CRR, CRC
Official Federal Court Reporter
August 31, 2017